

26.3 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all Customers in their respective designated service areas. ANTC, for the purpose of ubiquitous connectivity, network diversity and alternate routing, shall connect to at least one Tandem Office Switch for the receipt/completion of traffic to any NYNEX End Office Switch. The Parties shall establish, as part of the Joint Grooming Plan, overflow routing and diversity plans.

26.4 Thirty (30) Days after the Effective Date and each quarter during the term of this Agreement, each Party shall provide the other Party with a rolling, six (6) calendar month, non-binding forecast of its traffic and volume requirements for the services and Network Elements provided under this Agreement in the form and in such detail as agreed by the Parties. Notwithstanding Section 36, the Parties agree that each forecast provided under this Section 26.4 shall be deemed "Proprietary Information" under Section 36.1.1.

26.5 Any Party that is required pursuant to this Agreement to provide a forecast (the "Forecast Provider") or the Party that is entitled pursuant to this Agreement to receive a forecast (the "Forecast Recipient") with respect to traffic and volume requirements for the services and Network Elements provided under this Agreement may request in addition to non-binding forecasts required by Section 26.4 that the other Party enter into negotiations to establish a forecast (a "Binding Forecast") that commits such Forecast Provider to purchase, and such Forecast Recipient to provide, a specified volume to be utilized as set forth in such Binding Forecast. The Forecast Provider and Forecast Recipient shall negotiate the terms of such Binding Forecast in good faith and shall include in such Binding Forecast provisions regarding price, quantity, liability for failure to perform under a Binding Forecast and any other terms desired by such Forecast Provider and Forecast Recipient. Notwithstanding Section 36, the Parties agree that each forecast provided under this Section 26.5 shall be deemed "Proprietary Information" under Section 36.1.1.

26.6 Subject to and within the limitations and constraints of each Party's network, each Party is individually responsible (A) to provide facilities within its network which are necessary for routing, transporting, measuring, and (B) for billing traffic from the other Party's network, and (C) for delivering such traffic to the other Party's network, in the industry-standard format compatible with the other Party's network and to terminate the traffic it receives in that standard format to the proper address on its network. See BOC Notes on the Network (SR-TSV-00275) for the description of the design of local exchange carrier network. Such facilities shall be designed based upon the description and forecasts provided under Sections 26.3 - 26.5 above. The Parties are each solely responsible for

participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan.

26.7 Neither Party shall use any Wholesale Services, Network Elements, or other facilities services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's Customers, and either Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice, if practicable, at the earliest practicable time.

#### 26.8 Intentionally Left Blank

#### 26.9 Prevention of Unauthorized Use

(a) The Parties agree to cooperate to prevent, identify, and cure unauthorized use or fraud associated with clip on fraud, third-number billed calls, calling card calls, information provider calls, abuse of remote access features, off-hour abuse, network and/or PBX hacking, and viruses, and any other services related to this Agreement. The Parties shall meet at least two times a year to discuss ways to minimize or prevent unauthorized use. NYNEX shall make available any fraud or unauthorized use prevention procedures or equipment it uses to ANTC.

(b) A Party shall promptly notify the other whenever it suspects or knows of unauthorized use of Wholesale Services, Unbundled Network Elements, or any other facilities or services provided hereunder and shall assist the other in the identification of responsible individuals, the preparation and presentation of relevant information to federal, state and/or local officials for the purpose of prosecuting those individuals responsible for the unauthorized use of the Wholesale Services, Unbundled Network Elements, or any other facilities or services and in any legal actions that one or both may bring against third parties responsible for the unauthorized use of any of Wholesale Services, Unbundled Network Elements, or any other facilities or services provided hereunder. A Party shall provide, where requested and where available, any relevant call information, including the number on which the call was received, the translated number, the circuit number, the date and time of call, call duration, switch identification, and identification of trunk type.

(c) Both Parties shall use all reasonable efforts to prevent, monitor or cure unauthorized use. If a Party fails to do so and that Party had the ability to prevent the unauthorized or fraudulent use or where that Party had the responsibility to monitor, detect, or cure the unauthorized use and it failed to do so or failed to act promptly to prevent continued abuse, and where such failure

was not caused in part by the failure of the other Party to promptly give notice of information in its possession regarding the occurrence of the fraudulent or unauthorized use, then that Party shall bear the entire amount of the liability. If both Parties failed to act reasonably they shall share on a pro rata basis any financial responsibility for the unauthorized use. If the Parties are unable to agree on the appropriate financial responsibility for the unauthorized use, the Parties shall submit the matter to arbitration pursuant to Attachment ADR. Unless otherwise mutually agreed upon by the Parties, reasonable efforts shall not include the monitoring or reviewing by NYNEX of call detail or other customer usage information for ANTC's customers.

(d) This Section (26.9) shall apply to all Wholesale Services, Unbundled Network Elements and other services and facilities provided in this Agreement.

(e) Nothing herein shall be deemed to establish or expand the liability of either Party to any third party for unauthorized or fraudulent use.

26.10 Each Party is responsible for administering NXX codes assigned to it.

26.11 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches. The Parties shall provide, upon reasonable request, listings of CLLI codes assigned to its switches to the other Party.

26.12 Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

26.13 Each Party shall program and update its own Tandem Switches and End Office switches and network systems to recognize and route traffic to and from the other Party's assigned NXX codes. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for such activities. The Parties shall use best efforts to program and promptly update their switches upon notification by the other Party of the assignment of NXX codes or new numbers. NYNEX will test the NXX activation through the VETS system and provide the results to ANTC. ANTC shall notify NYNEX of a failure to program and update NYNEX's Tandem Switches and End Office Switches within two (2) business days, and in the event NYNEX shall fail to take appropriate corrective action within five (5) business days of such notification, subject to the provisions of Sections 33.1 and 33.2, NYNEX shall pay to ANTC five-hundred (\$500) per incident per affected switch. Notwithstanding the foregoing, NYNEX shall not be responsible for and shall not

be required to pay any damages to the extent the failure is due to PBX routing updates.

26.14 At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g., workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage for bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self insurance).

26.15 End User Repair Calls. The Parties will employ the following procedures for handling misdirected repair calls:

26.15.1 In answering repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party will respond with factual information in answering customer questions.

26.15.2 Each Party will notify its Customers as to the correct telephone numbers to call in order to access its repair bureaus.

26.15.3 To the extent possible, where the correct local exchange carrier can be determined, misdirected repair calls to one Party will be immediately referred to the other Party, as appropriate in a courteous manner, at no charge.

26.15.4 The Parties will provide their respective repair contact numbers to one another on a reciprocal basis.

## 27.0 TERM AND TERMINATION

27.1 The initial term of this Agreement shall be three (3) years (the "Term") which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least sixty (60) Days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, provided that such notice cannot be served if a request to renegotiate pursuant to Section 27.1.2 has been filed, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party as set forth below.

27.1.1 If pursuant to Section 27.1 the Agreement continues in full force and effect after the expiration of the Term, either Party may terminate the Agreement ninety (90) Days after delivering written notice to the other Party of

the intention to terminate this Agreement, provided that such notice cannot be served if a request to renegotiate pursuant to Section 27.1.2 has been filed. In such cases, neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 27.1.1 other than to pay to the other Party any amounts owed under this Agreement.

#### 27.1.2

(a) Notwithstanding the provisions of Section 27.1 and 27.1.1, either Party may, after the twenty-sixth month of the Effective Date, make a formal request to the other Party to renegotiate the terms of this Agreement pursuant to Section 251(c)(1) of the Act. The date of the other Party's receipt of such request shall be hereinafter referred to as the "Renegotiation Request Date." The Parties agree that within sixty (60) Days of such Renegotiation Request Date each Party will provide to the other a written description of its proposed changes to the Agreement. The Parties shall enter into negotiations on such proposed changes no later than seventy-five (75) Days after such Renegotiation Request Date.

(b) In the event that, notwithstanding the good faith efforts of both Parties, they are unable to agree on terms and conditions of a new agreement, effective as of the expiration of this Agreement, then either Party may, beginning one-hundred thirty five (135) Days after the Renegotiation Request Date, file a petition for arbitration with the PSC pursuant to Section 252(b) of the Act.

(c) The terms and conditions of this Agreement shall continue in full force and effect until the effective date of the PSC's decision pursuant to any petition filed under Section (b) above (the "Arbitration Decision") if a request is made to renegotiate pursuant to Section (a) above.

(d) Nothing in this section shall be construed as a waiver by either Party of its right to appeal any decision of the PSC, including the Arbitration Decision.

27.2 Upon termination or expiration of this Agreement in accordance with this Section 27:

(a) each Party shall comply immediately with its obligations set forth in Section 36;

(b) each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement, except those subject to a dispute covered by Section 37.2;

(c) each Party's indemnification obligations shall survive termination or expiration of this Agreement;

(d) NYNEX agrees to cooperate with ANTC and to use commercially reasonable efforts to effect an orderly and efficient transition to ANTC or ANTC's new vendor, subject to the payment by ANTC to NYNEX of the reasonable costs incurred in providing such cooperation. The Parties agree to cooperate to ensure uninterrupted service to their Customers during any transition period.

## 28.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

## 29.0 CANCELLATION CHARGES

Except as expressly set forth in this Agreement, no cancellation charges shall apply for canceling a particular service or network element.

## 30.0 NON-SEVERABILITY

30.1 The services, arrangements, interconnection, Network Elements, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable, subject only to Section 39 of this Agreement.

30.2 Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state Law, or any regulations or orders adopted pursuant to such Law.

## 31.0 INDEMNIFICATION

31.1 With respect to all matters under this Agreement other than Wholesale Services (which shall be governed by applicable tariffs), to the extent not prohibited by applicable Law, each Party (the Indemnifying Party) shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim, liability, damage, and expense (including reasonable attorney's fees) to third parties for:

- (a) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors; and
- (b) claims for libel, slander, infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's Customers; and
- (c) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the use of the Indemnified Party's services or facilities in connection with facilities of the Indemnifying Party.

31.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand. In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost, liability, damage and expense. In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand. The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

## 32.0 LIMITATION OF LIABILITY

32.1 Except (i) as otherwise provided in Section 31 of this Agreement, (ii) to the extent that appropriate remedies are agreed to by the Parties or ordered by the PSC pursuant to Section 33 of this Agreement, and/or (iii) to the extent that sanctions are ordered pursuant to Section 37 of this Agreement, no liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants or employees for any cost, expense, claim, liability, damage, expense or other Loss in the absence of gross negligence or willful misconduct.

32.2 Except (i) as otherwise expressly provided in Section 31 of this Agreement, (ii) to the extent that appropriate remedies are agreed to by the Parties or ordered by the PSC pursuant to Section 33 of this Agreement, and/or (iii) to the extent that sanctions are ordered pursuant to Section 37 of this Agreement, no Party shall be liable to the other Party for any cost, expense, claim, liability, damage, expense or other Loss caused by the conduct of the

other Party, the other Party's agents, servants, contractors or others acting in aid or concert with the other Party.

32.3 Except (i) to the extent that sanctions are ordered by the PSC pursuant to Attachment ADR of this Agreement, and/or (iii) to the extent that appropriate remedies expressly including Consequential Damages are agreed to by the Parties or ordered by the PSC pursuant to Section 33 of this Agreement, in no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

32.4 Except (i) as otherwise provided in Section 31 of this Agreement and/or (ii) to the extent that appropriate remedies are agreed to by the Parties or ordered by the PSC in accordance with Section 33 of this Agreement, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the amount that is or would have been charged to the other Party by such negligent or breaching Party for the specified service(s) or function(s) not performed or improperly performed, and only for the period of time such service or function was not performed or improperly performed.

### 33.0 LIQUIDATED DAMAGES AND SERVICE QUALITY STANDARDS FOR SPECIFIED ACTIVITIES

33.1 The Parties acknowledge that the PSC has initiated Service Quality Proceeding in which it is considering the establishment of generic service standards and possible damages to the extent such standards are not met. At its option, ANTC may elect in its entirety, and subject to all terms, conditions and other limitations as may be applicable, to incorporate and replace such decision into this Agreement in lieu of this Section 33 and Attachment SQ of this Agreement. The Parties expressly acknowledge that this provision resulted from good faith negotiations by the Parties in an attempt to resolve issues raised by ANTC in its petition filed for arbitration under Section 252(b) of the Act.

33.2 The following service standards and liquidated damages shall apply until a decision is reached in the Service Quality Proceeding addressing service standards, parity and liquidated damages. When a final decision is issued in the Service Quality Proceeding, at ANTC's option, the Parties shall amend this Agreement to incorporate that ruling (except where specified). The Parties shall meet and negotiate in good faith to establish contract language



reflecting the outcome in the Service Quality Proceeding within thirty (30) Days of the release of the ruling. If the Parties are unable to agree on appropriate language within thirty (30) Days of their first meeting, the Parties agree to submit any dispute for resolution under the provisions set forth in Attachment ADR.

33.3 NYNEX will provide ANTC with service that is at least equal in quality to that provided by NYNEX to itself or any subsidiary or affiliates; provided however, that the level of service it provides shall be no worse than NYNEX provides itself or any subsidiaries or affiliates as of the Effective Date of this Agreement. For purposes of this section, the level of service that NYNEX provides itself as of the Effective Date of this Agreement shall mean the service level provided in calendar year 1996, if such data exists, or if such data does not exist, the first twelve (12) month period for which data is compiled.

33.4 NYNEX agrees to measure and track service quality and to provide monthly reports to ANTC in the form contained in Attachment SQ.

33.5 In the event that NYNEX fails to conform to the performance standards set forth in this section or in Attachment SQ, ANTC may request, in addition to any other remedies, and NYNEX shall perform and deliver to ANTC; a root-cause analysis of the reasons for NYNEX's failure to conform, and NYNEX shall correct said cause as soon as reasonably possible.

### 33.6 Liquidated Damages

33.6.1 Certain Definitions. When used in this Section 33.6, the following terms shall have the meanings indicated:

33.6.1.1 "Specified Performance Breach" means the failure by NYNEX to meet the incident-based or parity-based Liquidated Damages performance standards set forth herein or in Attachment SQ for any of the Specified Activities as defined below.

33.6.1.2 "Specified Activity" means (i) an appointment for new or changed service order that is missed by NYNEX as a result of NYNEX's actions and not caused by the customer's actions ("Missed Installation Appointments"); (ii) installations completed within five (5) business days from the receipt of a valid order; and (iii) service outage over twenty four (24) Hours for POTs service, Wholesale Service, and UNEs, nine (9) or less per order.

33.6.2 Specified Performance Breach. In recognition of the (i) loss of customer opportunities, revenues and goodwill which ANTC might sustain in the event of a Specified Performance Breach; (ii) the uncertainty, in the event of such a Specified Performance Breach, of ANTC having available to it customer opportunities similar to those opportunities currently available to ANTC; and (iii)

the difficulty of accurately ascertaining the amount of damages ANTC would sustain in the event of such a Specified Performance Breach, NYNEX agrees to pay ANTC, subject to Section 33.6.4 below, Liquidated Damages as set forth in Section 33.7 below in the event of the occurrence of a Specified Performance Breach.

**33.6.3 Liquidated Damages.** ANTC and NYNEX agree and acknowledge that: (i) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of ANTC and NYNEX at the time of the negotiation and entering into of this Agreement, with due regard given to the performance expectations of each Party; (ii) the Liquidated Damages constitute a reasonable approximation of the damages ANTC would sustain if its damages were readily ascertainable; and (iii) ANTC shall not be required to provide any proof of the Liquidated Damages. Except as set forth in this Agreement, the Liquidated Damages shall be the sole and exclusive remedy of ANTC under this Agreement for NYNEX's failure to meet any Performance Standard as described in this section or in Attachment SQ.

**33.6.4 Limitations.** In no event shall NYNEX be liable to pay the Liquidated Damages if NYNEX's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means (i) a failure by ANTC to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule); (ii) any delay, act or failure to act by ANTC or a customer, agent or subcontractor of ANTC; (iii) any Force Majeure Event; or (iv) such other delay, act or failure to act as upon which the Parties may agree. If a Delaying Event (i) prevents NYNEX from performing or remedying a Specified Activity [as the case may be], then such Specified Activity shall be excluded from the calculation of NYNEX's compliance with the Performance Criteria, or (ii) only suspends NYNEX's ability to timely perform or remedy [as the case may be] the Specified Activity, the applicable time frame in which NYNEX's compliance with the Performance Criteria is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

### **33.7 Performance Standards**

**33.7.1 Incident-based standards.** Subject to the limitations set forth in Subsection 33.6.4, NYNEX shall pay as Liquidated Damages the following amounts for each Missed Installation Appointment caused by NYNEX's action and for each day that a resold service or unbundled network element is out of service for more than twenty four (24) hours:

**33.7.1.1 Missed Installation Appointments.** For resold services and, unbundled network elements, NYNEX shall pay ANTC as Liquidated Damages (i) twenty five percent (25%) of the applicable non-recurring

charges for the first Missed Installation Appointment relating to a specific service order; (ii) an additional 35 percent (35%) of the applicable non-recurring charges for the second Missed Installation Appointment relating to a specific service order; and (iii) the remaining 40 percent (40%) of the applicable non-recurring charges for the third Missed Installation Appointment relating to a specific service order. An appointment shall be considered missed when an order is not completed by the appointed time due to NYNEX's fault. Excluded from Missed Appointments will be Customer misses, where the customer (or ANTC) is not ready or required access is not available

**33.7.1.2 Out of Service Over 24 Hours.** For resold services and unbundled network elements (excluding interconnection trunks), NYNEX shall pay ANTC as Liquidated Damages 1/30 of the applicable monthly recurring charges for each day relating to an incident in which service is interrupted for greater than twenty four (24) hours. For purposes of this calculation, an out of service incident is considered to begin when it is properly reported by ANTC to NYNEX and an ANTC test has been done by ANTC and the diagnosis is provided to NYNEX. NYNEX defines out of service as when an end user indicates one or more of the following conditions: No dial tone, can not be called, can not call out.

**33.7.1.3 Interconnection Trunks.** NYNEX shall pay ANTC as Liquidated Damages according to the schedule set forth in Section 33.7.1.4 following. Excluded from Missed Appointments will be Customer misses, where ANTC is not ready or required access is not available. Also excluded will be Trunks missed when Trunks exceed the annual forecast by over five percent (5%) in the specific location.

**33.7.1.4 Firm Order Commitment ("FOC").** For interconnection trunks, NYNEX shall pay ANTC as Liquidated Damages for each FOC not sent by NYNEX to ANTC within ten (10) business days of receipt of a valid and complete LSR, twenty (20%) percent of the applicable non-recurring ordering charge. This provision shall apply until the PSC issues its ruling in the Service Quality Proceeding.

Days Past Due	Damages per (T1) Trunk Missed
1-3 business days	\$240
4-7 business days	\$475
each additional day	\$30

**33.7.2 Parity Standards.** Subject to the limitations set forth in Subsection 33.6.4, NYNEX shall pay as Liquidated Damages the amounts set forth in Appendix B. The performance levels set forth in said Appendix B list the

performance that NYNEX provides to its own end user customers as of the Effective Date of this Agreement.

33.7.2.1 The levels of performance provided by NYNEX to itself and to ANTC will be determined annually based on the performance reports furnished to ANTC and the PSC. If the reported level of performance for any parity category listed in Appendix E that NYNEX provided to itself is better than the level set forth in Appendix B, the improved performance level for the preceding year shall replace the performance level contained in Appendix B for the following year, and the Liquidated Damages schedule will be adjusted accordingly.

33.7.2.2 NYNEX shall pay ANTC for deviations from parity in accordance with the payment schedule indicated in Appendix B within sixty (60) Days after the end of each anniversary of the Effective Date of this Agreement.

33.8 ANTC shall pay fees as set forth in the Pricing Attachment for dispatches in error or falsely directed dispatches, dispatches where the trouble is a customer or ANTC caused trouble, where NYNEX dispatches a technician but does not gain access to the customer premises within 10 minutes, or where there is ultimately no trouble found after ANTC reports a trouble and NYNEX dispatches a person.

33.9 Nothing in this Section 33 shall in any way limit the Parties' duties and/or obligations under Section 26.9 of this Agreement.

#### 34.0 REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the PSC and may thereafter be filed with the FCC. Each Party covenants and agrees to support approval of this Agreement by the PSC or the FCC without modifying its terms, subject to: (1) either Party's rights under Section 39 of this Agreement, and (2) either Party's reservation of its rights to judicial review of the approval of the Agreement or any clause therein. In the event the PSC or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Notwithstanding the above, the Parties reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement.

This agreement is subject to change or modification as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction or as may be required by either Party based on any significant change in FCC or PSC rules which may impact the provision of Unbundled Network Elements,

Wholesale Services and other facilities and services provided under this Agreement or the rights and obligations of the Parties under the Act. The Parties shall use best efforts to negotiate in good faith revisions to this Agreement to incorporate any changes or modifications as may be required under this subsection. ANTC shall have a reasonable time to modify or redeploy its network or operations to reflect such changes or modifications.

### 35.0 *FORCE MAJEURE*

35.1 *Force Majeure.* Neither Party shall be responsible for delays or failures in performance of any part of this Agreement resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: adverse weather conditions, riot, sabotage, volcano, military authority, fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control (collectively, a "*Force Majeure Event*"). In such event, the affected Party shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

35.2 The Parties shall cooperate to limit the impact of a *Force Majeure Event*. Such cooperation shall include taking such actions as set forth in the Joint Grooming Plan and providing advance warning of a potential *Force Majeure Event*, if possible.

### 36.0 *CONFIDENTIALITY*

#### 36.1 *Confidentiality.*

36.1.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a "*Disclosing Party*") that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, agents or Affiliates (its "*Representatives*" and with a Party, a "*Receiving Party*") pursuant to this Agreement ("*Proprietary Information*") shall be deemed the property of the

Disclosing Party. Proprietary Information; if written, shall be marked "Confidential" or "Proprietary" or by other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) Days after disclosure. Unless Proprietary Information was previously known by the Receiving Party to be free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, it (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law only in accordance with Section 36.1.2.

36.1.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed to have waived the Receiving Party's compliance with this Section 36 with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

36.1.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public. Either Party shall be permitted to request one copy of returned Proprietary Information (which shall remain confidential and subject to the protections set forth in this Section) as necessary to document its performance of its obligations under this Agreement.

36.2 NYNEX shall establish appropriate screening mechanisms to ensure that information provided by ANTC or ANTC's customers for the purpose of ordering, maintenance or repair is not used for any marketing purpose or disclosed to anyone in a marketing capacity without the express written approval of ANTC. No Party shall, without obtaining the prior written consent of the Party

with proprietary rights thereto, use such Party's Proprietary Information for any purpose other than those set forth herein or for discussions between the Parties, internal planning in connection with this Agreement, the protection of its rights and the performance of its duties and obligations under this Agreement, and the provision of other NYNEX services to ANTC.

36.3 The Parties shall maintain in strict confidence all Proprietary Information for at least a period of five (5) years from the date of its expiration or termination (including all extensions thereto). At no time shall the information be disclosed to a competitor of the other Party (known to be such after reasonable inquiry).

36.4 The Parties acknowledge that any disclosure or misappropriation of Confidential Information in violation of this Agreement could cause irreparable harm, the amount of which may be extremely difficult to determine, thus potentially making any remedy at law or in damages inadequate. Each Party, therefore, agrees that the other Party shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Section and for any other equitable relief as such other Party deems appropriate. This right shall be in addition to any other remedy available in law or equity.

36.5 The Parties will treat Customer Proprietary Information in accordance with Section 222 of the Act and any FCC regulations issued pursuant thereto.

### 37.0 DISPUTE RESOLUTION

37.1 Disputes arising out of the implementation, enforcement, or provisioning of services pursuant to this Agreement shall be addressed as set forth in Attachment ADR, except as otherwise provided in Section 37.2.

37.2 Disputes involving amounts billed (other than with respect to Wholesale Services) shall be addressed as follows:

(a) If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a dispute between the Parties, the Party billed shall within thirty (30) Days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The billed Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties, except, however, if a Disputed Amount is less than five thousand dollars (\$5,000) in any

given invoice, the Parties agree that the amount does not have to be placed in an escrow account.

(b) If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated official who has authority to settle the dispute. The designated officials shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated officials, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

(c) If the Parties are unable to resolve issues related to the Disputed Amounts after referral of the dispute pursuant to Section 37.2(b) of this Agreement, then either Party may elect to use the dispute resolution process set forth in Attachment ADR.

(d) Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of: (i) one and one-half percent (1 1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law. Any refunds owed by a Billing Party shall accrue interest from the date such amounts were paid to the Billing Party at same rate of interest set forth in this subsection. With respect to disputed amounts that have been placed in an escrow account pursuant to subsection 37.2(a), neither Party shall owe any interest upon resolution of the dispute but rather shall recover the amounts owed and any proportionate interest earned on such amounts in the escrow account.

(e) Remedies for Non-Payment. In the event of non-payment by either Party of undisputed amounts due and payable under this Agreement, the other Party shall have available to it all remedies set forth in this Agreement and in the applicable NYPSC Tariffs, subject to the continuing jurisdiction of the PSC.

(f) Nothing herein shall limit the time under applicable Law within which either Party may dispute any bill, it being understood that payment of any amounts under this section, unless otherwise indicated, does not constitute a waiver of either Party's rights under applicable Law to contest its obligation to pay any amounts allegedly owed under this Agreement.

37.3 The Parties agree that all negotiations pursuant to this Section 37 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.



#### 38.0. SECTION 252(i) OBLIGATIONS

38.1 Section 252(i) Obligations. To the extent required by Law, if either Party enters into an agreement (the "Other Agreement") approved by the PSC or FCC pursuant to Section 252 of the Act which makes available in the State of New York any interconnection, service, or network element to another requesting Telecommunications Carrier, including itself or its affiliates, such Party shall make available to the other Party such interconnection, service, or network element upon the same terms and conditions as those provided in the Other Agreement. Nothing herein shall expand or otherwise change the Parties respective rights and obligations under Section 252(i) of the Act.

#### 39.0 UNIDENTIFIED CHARGES

39.1 Subject to Subsection 39.2 below and the continuing jurisdiction of the PSC, NYNEX may not impose any charge on ANTC for Unbundled Network Elements, Wholesale Services and other facilities and services as provided in this Agreement that are not identified in the Pricing Attachment or elsewhere herein, unless agreed to by the Parties. The Pricing Attachment shall be modified as required by the PSC and may be modified from time to time upon mutual agreement.

39.2 Nothing in this Agreement shall affect or limit: (i) NYT's right with respect to a new element or service not offered to ANTC on the Effective Date of this Agreement, or (ii) NYT's right to modify, restructure or change an existing element or service and to charge ANTC such rates as approved by the PSC for such modified, restructured or altered element or service. If the PSC approves different rates than those set forth in the Pricing Attachment, unless otherwise agreed to by the Parties herein, the rates established by the PSC shall become the rates established herein. The Parties agree that those rates shall be applied prospectively only, unless otherwise ordered by the PSC.

#### 40.0 AUDIT RIGHTS

40.1 Upon reasonable notice and subject to the Parties' confidentiality obligations to its other customers and reasonable security precautions, either Party may audit the other Party's books, records (electronic or otherwise) and other documents that do or should contain information regarding any obligation arising under this Agreement. Either Party may conduct such an audit once annually. The Party requesting an audit may employ such assistance as it deems desirable to conduct such audits (such as an outside auditor), except for the on-site presence of attorneys at an audit, so long as the party providing assistance agrees to be bound by a confidentiality agreement and to the terms of Section 36 of this Agreement. Either Party may also conduct an audit for the purpose of evaluating the accuracy of invoices presented for reciprocal

compensation, or the true up of INP traffic, pursuant to the same terms and conditions set forth in this Section.

40.2 The audited Party shall cooperate fully in any such audit, providing reasonable access at a mutually agreed upon location to any books, records, and documents and all personnel having information pertinent to the audit. No original books and records of the audited Party may leave the premises.

40.3 Any dispute concerning audit results and recommendations shall be referred to the appropriate official in the Parties' financial organizations for resolution. If they are unable, within twenty (20) Days of a referral, to resolve the subject dispute, all unresolved matters shall be resolved pursuant to the procedures set forth in Attachment ADR.

#### 41.0 MISCELLANEOUS

##### 41.1 Authorization.

41.1.1 NYT is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

41.1.2 ANTC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. ANTC represents that it intends to be a provider of telephone exchange service to subscribers offered over its own telephone exchange service facilities, over a combination of its own facilities and network elements purchased from NYNEX or another carrier, or in combination with the resale of the telecommunications services of other carriers.

41.2 Compliance. Each Party represents that it shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

41.3 Compliance with the Communications Assistance for Law Enforcement Act of 1994 ("CALEA"). Each Party represents that any equipment, facilities or services provided to the other Party under this Agreement shall comply with CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

41.4 Independent Contractor. Neither this Agreement, nor any actions taken by NYNEX or ANTC in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between ANTC and NYNEX, or any relationship other than that of purchaser and seller of services.

Neither this Agreement, nor any actions taken by NYNEX or ANTC in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between NYNEX and ANTC's Customers or others.

41.5 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the PSC, the exclusive jurisdiction for all such claims shall be with the PSC, and the exclusive remedy for such claims shall be as provided for by such PSC. In all other respects, this Agreement shall be governed by the domestic laws of the State of New York without reference to conflict of law provisions.

41.6 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be eligible for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party until the certificate is provided.

41.7 Non-Assignment. This Agreement shall be binding upon both Parties and any affiliate agreed to in writing and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party its telephone exchange and exchange access network facilities within the State of New York, or any portion thereof, to a third party, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the

prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

41.8 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

41.9 Notices. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service, (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested or (iv) delivered by telecopy (notices delivered by telecopy will be followed by notice by first class mail) to the following addresses of the Parties:

To ANTC:

Maureen Swift  
Director of Regulatory Affairs  
ACC National Telecom Corp.  
400 West Ave.  
Rochester, NY 14611  
Attn: Director of Regulatory Affairs  
Facsimile: (716) 987-3045

To NYNEX:

Jacob J. Goldberg  
V.P. - Telecom Industry Services  
Bell Atlantic - New York  
1095 Avenue of Americas  
40th Floor  
New York, NY 10036  
Attn: V.P. - Telecom Industry Services  
Facsimile: (212) 597-2585

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery,

(iii) three (3) Days after mailing in the case of first class or certified U.S. mail or  
(iv) on the date set forth on the confirmation in the case of telecopy.

**41.10 Publicity and Use of Trademarks or Service Marks.** Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

**41.11 Joint Work Product.** This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

**41.12 No Third Party Beneficiaries; Disclaimer of Agency.** This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

**41.13 No License.** No License under patents, copyrights or any other intellectual property right is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement, except a limited right to use subject to the following: ANTIC agrees that the rights granted by NYNEX hereunder shall, where applicable, be subject to the restrictions, if any, contained in any current software license agreements between NYNEX and NYNEX's software vendors. From and after the Effective Date of this Agreement, NYNEX shall not enter into any software license agreements that would materially impair NYNEX's ability to perform its obligations hereunder, provided, however, that ANTIC acknowledges that the functions and features made available to ANTIC hereunder through the use of third party proprietary products may involve additional terms and conditions and/or separate licensing to ANTIC. With respect to any agreements entered into after the Effective Date, NYNEX shall exercise reasonable efforts to avoid the imposition of any unreasonable restrictions in such agreements that may materially impair ANTIC's use of the software. Where NYNEX provides ANTIC with software features which NYNEX has a right to use but has not deployed for its own retail customers, ANTIC shall pay to NYNEX its proportionate share,

along with other similarly situated telecommunications carriers (including NYNEX to the extent NYNEX seeks to deploy such feature for its own retail end-users), all of NYNEX's costs and expenses incurred by NYNEX in providing such features. To the extent ANTC is the sole telecommunications carrier seeking to access that particular software feature, ANTC shall be responsible for one hundred percent (100%) of the costs, subject to ANTC's ability to recover a proportionate part of its costs from another telecommunications carrier (including NYNEX) which seeks to access that particular feature. The calculation of such costs and expenses shall be on an ICB basis. NYNEX shall provide reasonable assistance to ANTC to permit ANTC to recover a proportionate share of the fees and costs paid to NYNEX to deploy the particular software feature from a subsequent requesting telecommunications carrier or NYNEX to the extent NYNEX seeks to make such feature available to its retail customers.

**41.14 Technology Upgrades.** Nothing in this Agreement shall limit NYNEX's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. NYNEX shall provide ANTC written notice at least ninety (90) Days (or earlier if possible) prior to the incorporation of any such upgrades in NYNEX's network which NYNEX reasonably believes would materially impact ANTC's service or operations. If NYNEX is aware and can reasonably give ANTC notice at an earlier date, or if it gives notice to any other party at an earlier date, NYNEX shall provide ANTC notice at that time. ANTC shall be solely responsible for the cost and effort of accommodating such changes in its own network.

**41.15 Survival.** The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including without limitation, Sections 6.7, 6.8, 24, 26.9, 27.2, 28, 29, 31, 32, 33, 36, 37, 40, 41.3, 41.10 and 41.13.

**41.16 Scope of Agreement.** This Agreement is intended to describe and enable specific Interconnection and access to unbundled Network Elements and compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein.

**41.17 Entire Agreement.** The terms contained in this Agreement and any Attachments, Exhibits, and other documents or instruments referred to herein, which are incorporated into this Agreement by reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices

or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

41.18 Subject to PSC approval of NYT's tariff filing dated October 29, 1997, ANTC may use 2-wire other than signal grade loops connected to other than signal grade interoffice mileage to extend a loop from NYT's normal serving wire center to the POT Bay at ANTC's collocation multiplexing node to another NYT central office in the same LATA pursuant to the terms and conditions set forth in the NYPSC No. 900 tariff, section I.2.b.29, as may be amended from time to time. The Parties agree that in the event NYT is ordered by the Commission or the FCC to otherwise provision this service as an unbundled Network Element or combination thereof, NYT shall provide such service to ANTC on the terms and conditions required by such order.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

ACC NATIONAL TELECOM CORP.

By: Mae Squier-Dow

Printed: Mae Squier-Dow

President - ACC National Telecom Corp.

Date: 11/11/97

NYT (d/b/a Bell Atlantic-New York)

By: Jacob J. Goldberg

Printed: Jacob J. Goldberg

Vice President - Telecom Industry Services

Date: 11/17/97